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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,320	04/28/2000	Michael Wayne Brown	AUS000052US1	3984

7590 09/13/2004

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EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Supplemental Action After Remand

1. This application has been remanded by the Board of Patent Appeals and Inferences (“Board”) since it “is not ready for docketing”¹ because “there is no indication that an appeal conference was held.”² The Board also states that “when an appeal conference has been held, the appeal conference (sic) should identify themselves as the conferees, along with placing their initials next to there name.”³
2. The Examiner finds that the Examiner’s Answer⁴ (“Answer”) on page 47 expressly stated under the title “Conferees” (emphasis in original) the names “James Trammell[,] Supervisory Primary Examiner” and “James McClellen[,] Primary Examiner.” Moreover, the Examiner finds that the “AJF” at the bottom of the page indicates the examiner of record typed the Answer. Finally, the Examiner has reviewed the MPEP and agrees that MPEP §1208 requires the two conferees to place their initials next to their name.
3. To be clear, the Board’s Order of Remand does *not* state or reasonably infer that the remand is due to violations of the ‘initialing’ requirements as stated in MPEP §1208. Instead, the Order of Remand makes clear that the remand is because there is “no indication” that an appeals conference was held.
4. Because the Answer was drafted and typed by the examiner of record and because the Examiner indicated Examiners Trammel and McClellen as conferees, the Examiner finds that

¹ See “Order Returning Undocketed Appeal to the Examiner” from the Board mailed July 27, 2004, Paper No. 17, Page 1 (“Order of Remand”).

² *Id.*

³ *Id.* at 1-2.

⁴ Examiner’s Answer mailed March 17, 2004, Paper No. 16.

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there is evidence that an appeal conference was held. Moreover, an examination of the file wrapper indicates that on the "Appeal Conference Worksheet," the "YES" box is checked next to the question, "APPEAL CONFERENCE HELD?"

5. Because of the evidence noted above, the Board's assertion that there is *no* indication that an appeal conference was held is simply not supported. In light of this fact, the Examiner can only reasonably infer that the Board's conclusion that there is "no indication" of an appeal conference implies fraud by the Examiner. The Examiner takes all allegations of fraud—both express and implied—very seriously. Because the Examiner takes such allegations of fraud so seriously, the Examiner will always respond and defend any allegation of fraud—both express and implied—to the best of his ability.

6. Moreover, the Examiner finds that the examiner of record in most all instances drafts examiner answers. Because the answer is primarily the work of the examiner of record, it is up to the examiner of record—and not the conferees themselves—to identify the conferees. And other than expressly listing their names under the title "Conferees" in the examiner's answer, it is unclear how the *conferees* should identify themselves as requested. It is the Examiner's position that because most of the conferees initials are unreadable, the initials of the conferees are not and can not be used to identify the conferees. This initialing—like most any initialing—is used to authenticate the typed or printed name.

7. In light of the above, the Examiner respectfully requests that the Board reconsider its order as stated in the Order of Remand. In particular, the Examiner respectfully requests the Board to

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clarify its implied assertions of fraud by the Examiner and provide appropriate evidence in support thereof.

Alternatively, if the Board finds that the lack of initials in the Answer was evidence that the Examiner had not followed the initialing requirements of MPEP §1208 (by failing to procure the initials of the appeal conference conferees), the Board should amend its order to clarify and expressly indicate that the remand is due to the Examiner's failure to comply with the 'initialing' requirements in MPEP §1208. Should the Board elect the latter of the two, the Examiner also respectfully requests that the Board clarify the record regarding its conclusion that there is "no indication" that an appeals conference was held.

8. In any event, should the Board find that the Examiner failed to comply with the 'initialing' requirements of MPEP §1208, the Examiner has now procured the initials of the conferees. To be clear, the Answer is now initialed by the conferees. In this case, Applicants should consider the typed statements of conferee names in the Answer as sufficient evidence that an appeals conference was held. Finally and also in accordance with the Order of Remand, it is the Examiner's position that no further action is necessary in this appeal.

9. Regarding the missing three (3) references, these missing references have again been placed in the file.

10. Finally, the Examiner notes that a colored, stamped copy of the Answer has been reprinted (by persons unknown) and placed in the file wrapper. The Examiner has indicated this copy as "Not an examiner copy" on the front of this Answer. Such reprint(s) *have* not and *are* not authorized by the Examiner. These reprints contain numerous errors. See *e.g.* pages 31 and 32 of the Answer showing extraneous markings. Additionally, other copies of the answer in the file

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wrapper (indicated by a photocopied or black and white, stamped mailing date on the Answer) show the mailing stamp in a different position. These "copied copies" however do not appear to contain the errors.

11. Because this colored stamp version of the Answer contains errors and because some versions of the Answer have typographical problems while others do not, the Examiner finds that the copy with the colored mailing stamp must have been reprinted. This reprinted version contains errors as noted above. If reprints of any answer are desired, parties are asked to *contact the Examiner* so that a proper copy may be made available. This reprinting exasperates the typographical problems because these unauthorized copies can not and do not contain *conferee initials* resulting in the Board remanding such cases to the Examiner. Such remanding creates additional time and work for both the Board and Examiner alike.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval ("PAIR") system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AJFischer 9/9/04

Andrew J. Fischer
Primary Examiner
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